

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAWLE HOYTE,

Petitioner,

ORDER

-against-

11 CV 1548 (RJD)

UNITED STATES OF AMERICA,

Respondent.

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DEARIE, District Judge.

In a one-page application styled “Petitioner’s Motion for Summary Judgment,” petitioner Rawle Hoyte asks this Court to enter summary judgment on the merits of the claims raised in his motion under 28 U.S.C. § 2255. Petitioner contends that the government is foreclosed from arguing the merits of this case because it failed to file its opposition to his 2255 papers by July 5, 2011, the date specified in this Court’s Order to Show Cause. He further claims that he was not served with a copy of the government’s letter seeking an extension of time to file its opposition.

As the docket reflects, the extension letter is dated November 2, 2011, more than four months after the date the government’s response was due. The letter explains that the untimeliness of the government’s application to extend a missed deadline was due to a “filing error” and offers an apology. The new deadline the government requested was December 2, 2011, and on that date the government filed its opposition, a four-page letter addressed to the timeliness of petitioner’s 2255 motion but not the merits of his claims.

On the matter of service of the government’s extension request, the letter indicates, by a “cc,” that it was sent to petitioner by certified mail, but it does not specify the address used and no separate proof of service was filed. The record also lacks any document indicating failure of the noted certified delivery. Further, the docket indicates that petitioner’s address changed twice

during the relevant period. Petitioner telephoned the Clerk's office to report two new addresses (one in Guyana and one in Florida) on September 2, 2011, and telephoned again on November 30, 2011, to remove the Guyana address. Whether there occurred a failure of service of the November 2, 2011 extension request and if so, the cause, are not matters the Court can resolve on this record nor are they questions that need to be resolved because petitioner, who could not likely have advanced grounds sufficient to defeat the extension request, has not been prejudiced.

Accordingly, the Court hereby orders as follows:

(1) the government's application for an extension of time to file its opposition to petitioner's application under section 2255 is granted *nunc pro tunc* and its December 2, 2011 submission is accepted; (2) as required by the Order to Show Cause, the government shall file proof of service upon petitioner of its December 2, 2011 submission; (3) the government shall, within thirty days of the date of this Order and in any event no later than February 6, 2012, prepare and serve upon petitioner a supplemental submission addressing the merits of petitioner's claims and file the original thereof and proof of service with the Court; and (3) petitioner, within thirty days of receipt of the government's supplemental submission and in any event no later than March 12, 2012, shall serve and file his reply to both the government's December 2, 2011 submission and its supplemental submission.

SO ORDERED.

Dated: Brooklyn, New York
January 5, 2012

s/ Judge Raymond J. Dearie

RAYMOND J. DEARIE
United States District Judge